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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,672	01/23/2002	Kazuhiro Namba	F-7294	7969
28107	7590	10/15/2004	EXAMINER	
JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			JONES, SCOTT E	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,672

Applicant(s)

NAMBA ET AL.

Examiner

Scott E. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2004 and 09 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/27/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment and request for continued examination filed on July 27, 2004 and September 9, 2004, respectively in which applicant amends claims 1, 4, 7, and 8, cancels claim 3, adds claim 13, and responds to the claim rejections. Claims 1, 2, 4-8, and 10-13 are pending.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 27, 2004 has been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-8, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipson (U.S. 5,435,554).

Lipson discloses a system and method for realistically simulating a baseball game by utilizing game player's inputs to affect the real-world factors present in baseball. Lipson discloses:

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Regarding Claims 1, 7, 8, and 13:

- displaying a game image including a plurality of characters on a monitor screen of a computer (Fig. 3a);
- receiving input of contents of instructions based on a moving operation and a button operation made by the game player on a pointing device (Abstract, Figs. 1b, 2, 4b, 4c, 4d, 5b, 6a, column 3, line 45-column 4, line 8, column 4, line 61-column 5, line 22, column 6, line 51-column 7, line 12, and column 11, line 40-column 12, line 9); and
- proceeding a baseball game based on the input made by the game player; wherein in said receiving step, the designation of instructions for the pitching action of a pitcher character is accomplished by the operation of said pointing device when the game player's team is the defensive side, designation of instructions for the offensive action of a batter character is accomplished by the operation of said pointing device when the game player's team is the offensive side, and a selection of bunting or hitting as said offensive action is accomplished by a button operation of said pointing device, and designation of instructions for alteration of a height and an orientation of the bat character is accomplished singly by the moving operation of said pointing device in cases where bunting is selected as the offensive action of said batting character; (Abstract, Figs. 1b, 2, 4b, 4c, 4d, 5b, 6a, column 3, line 45-column 4, line 8, column 4, line 61-column 5, line 22, column 6, line 51-column 7, line 12, column 11, line 40-column 12, line 9, Column 14, lines 17-35, Column 10, line 51); In addition to pressing any one of buttons (37, 38, or 39) to determine the swing type a player

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designates the orientation and height of the bat character with the pointing device (18).

- changing the height of the bat character displayed on the monitor screen according to the received instructions regarding the alteration of the height of the bat character (Column 14, lines 17-35 and Column 10, line 51).

Regarding Claim 2:

- said pointing device has at least two buttons including a first button and a second button, and said selection of bunting or hitting is accomplished by performing different button operations on said first button and second button (Column 11, line 40-column 12, line 9 and Fig. 1b).

Regarding Claim 4:

- the operation regarding the alteration of the height and the orientation of said bat character is received after the pitching action of the pitcher character is initiated (Column 14, lines 17-35).

Regarding Claim 5:

- the degree of success of the batting action is judged in accordance with the degree of overlap of said bat character and said ball character and the orientation of said bat character when said bunting is selected (Column 14, line 36-column 15, line 7 and Fig. 4e).

Regarding Claim 6:

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- further comprising the steps of setting parameters that define abilities for each batter character of said game player's team, and changing these parameters in accordance with said batting results and said pitching results (Column 8, lines 7-32).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipson (U.S. 5,435,554).

Lipson discloses to one of ordinary skill in the art that as discussed above regarding claims 1, 2, 4-8, and 13. However, Lipson seems to lack explicitly disclosing:

Regarding Claims 10, 11, and 12:

- receiving inputs for the game by the game player on a (computer) mouse.

However, regarding claims 10, 11, and 12, to one having ordinary skill in the art, utilizing a computer mouse for game player inputs into a video game was notoriously well known at the time of Applicant's invention. Particularly, the inputs provided by the player by rolling the trackball of the mouse on a surface provide the same function as a joystick moved by a player in a traditional video game, such as the one described in Lipson. One would be motivated to utilize a computer mouse for game player inputs into a video game in order for a game player to enjoy a game without requiring the player to obtain a joystick, or other game input device, for use on a personal computer.

Response to Arguments

7. Applicant's arguments filed July 27, 2004 with regards to the rejection to claims 1-8 under 35 U.S.C. 102(b) as being anticipated by Lipson (U.S. 5,435,554) and with regards to the rejection to claims 10-12 under 35 U.S.C. 103(a) as being unpatentable over Lipson (U.S. 5,435,554) have been fully considered but they are not persuasive.

8. Applicant's argument, see page 14 and the replacement drawing sheet for Figure 2, filed July 27, 2004, with respect to the objection to Figure 2 has been fully considered and is persuasive. The objection of Figure 2 has been withdrawn.

9. Applicant respectfully traverses the rejection to Claims 1-8 under 35 U.S.C. 102(b) as being anticipated by Lipson (U.S. 5,435,554). Applicant alleges Lipson lacks disclosing the newly added claim limitation, "alteration of a height and an orientation of the bat character is accomplished singly by the moving operation of said pointing device in cases where bunting is selected as the offensive action of said batting character." Applicant alleges Lipson fails to disclose using a pointing device to alter the height of the bat when bunting. Applicant admits, however, that Lipson discloses a description of the vertical position of the batter's swing relative to the strike zone, and relates to the adjustment in the batting position in a vertical direction when swinging (Page 20 of the response dated February 17, 2004). The examiner respectfully asserts a bunt attempt is a swing as defined in Lipson. In particular, Lipson discloses, "a player selects a particular type of swing...a normal swing, a power swing, and a bunt attempt by pressing the corresponding one of buttons (37, 38, or 39) (***Emphasis Added***) (Column 5, lines 16-22 and Figure 1b). A player must continuously press one of buttons (37, 38, or 39) during the entirety of the swing or the gaming character will stop during the swing (check swing). Furthermore,

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pointing device (8-directional joystick 18) shown in figure 1b is utilized by the player by using player skill to change the orientation and height of the swing during the pitch. This feature is disclosed in Column 14, lines 17-35. For instance, when a batter pushes the joystick forward, then the batter's swing will correspondingly be through the lower section of the strike zone to simulate a looping swing. In this example, the height of the bat character is accomplished (low in the strike zone) and the orientation of the bat character is accomplished (looping swing-at an angle from the horizontal-not a level swing). Applicant alleges, "the joystick 18 is used to determine the direction of the batted ball..." The examiner agrees that the joystick is used to determine the direction of the batted ball, but the examiner asserts this is a result of the input(s) to the joystick provided by the player during the swing. For instance, a pop fly ball is accomplished as a result of the looping swing described above. Therefore, the examiner believes Lipson anticipates claims.

10. Applicant respectfully traverses the rejection to claims 10-12 under 35 U.S.C. 103(a) as being unpatentable over Lipson (U.S. 5,435,554). Applicant alleges a *prima facie* case of obviousness has not been established. The examiner respectfully disagrees. However, in an effort to clarify the examiner's position, the examiner has further elaborated on why utilizing a computer mouse in lieu of a traditional joystick in a PC game would have been obvious to one having ordinary skill in the art above in the rejection. Therefore, the examiner believes Lipson renders the claimed invention obvious.

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Conclusion

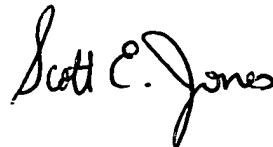
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott E. Jones whose telephone number is (703) 308-7133. The examiner can normally be reached on Monday - Thursday, 6:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (703) 308-2064. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott E. Jones
Examiner
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sej

A handwritten signature in black ink that reads "Scott E. Jones". The signature is written in a cursive style with a large, stylized "S" and "J".